

Message Text

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AMEMBASSY LONDON PRIORITY
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AMEMBASSY SUVA

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SUBJECT: LOS - POLLUTION AND SCIENTIFIC RESEARCH

FOLLOWING IS STATEMENT MADE BY AMBASSADOR ELLIOT L.
RICHARDSON AT MEETING OF COMMITTEE III ON APRIL 20:

BEGIN QUOTE - MR. CHAIRMAN: DURING THE DISCUSSIONS IN THE
GENERAL COMMITTEE ON THE ORGANIZATION OF WORK FOR THIS
SESSION, MY DELEGATION PROPOSED THAT THE THIRD COMMITTEE
CONSIDER FURTHER NEGOTIATIONS WHERE NECESSARY ON SCIENTIFIC
RESEARCH AND PRESERVATION OF THE MARINE ENVIRONMENT. AS
THIS IS THE FIRST MEETING OF THE COMMITTEE AT THE CURRENT
SESSION, WE WELCOME THE OPPORTUNITY TO EXPLAIN OUR REASONS
FOR MAKING THAT PROPOSAL.

MR. CHAIRMAN, THE OBJECTIVE OF THIS CONFERENCE IS TO PRO-
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DUCE A WIDELY RATIFIED CONVENTION GENERALLY ACCEPTED AS
LAW. CONSIDERABLE WORK HAS BEEN DONE IN THE THIRD COMMIT-
TEE TO FURTHER THIS OBJECTIVE. NEVERTHELESS, AFTER CAREFUL
REVIEW, WE MUST CONCLUDE THAT UNLESS THE ENVIRONMENTAL AND
SCIENTIFIC RESEARCH TEXTS ARE IMPROVED, THEY WILL NOT PRO-
MOTE THIS OBJECTIVE AND MIGHT WELL IMPEDE IT.

WE HASTEN TO ADD THAT THIS MAY BE A CASE WHERE THE ILLNESS IS MORE SERIOUS THAN THE REMEDY. THE OVERALL INTEGRITY AND BALANCE OF INTERRELATED TEXTS AND PACKAGES, AND THE LARGE MAJORITY OF ARTICLES, CAN AND SHOULD BE RESPECTED ON BOTH SUBJECTS. WE SEEK INFORMAL MEANS TO COOPERATE WITH OTHERS IN EFFECTIVE EFFORTS TO PRODUCE IMPROVED TEXTS AT THIS SESSION. WITH SUCH COOPERATION, WE ARE PERSUADED THAT THERE IS NO SIGNIFICANT RISK OF A GENERAL UNRAVELLING OF OUR WORK. WITHOUT SUCH COOPERATION, THE EFFORTS OF MANY YEARS MAY BE IN SERIOUS AND UNNECESSARY JEOPARDY.

MR. CHAIRMAN, THIS CONFERENCE HAS NO MORE IMPORTANT SUBSTANTIVE CHALLENGE BEFORE IT THAN ELABORATING AN ADEQUATE LEGAL REGIME FOR PROTECTION OF THE MARINE ENVIRONMENT. THE LESSON OF THE TRAGIC ACCIDENT INVOLVING THE AMOCO CADIZ IS THAT WE MUST BETTER PROTECT ALL COASTS AGAINST POLLUTION DAMAGE. MUCH OF THAT EFFORT MUST BE CONDUCTED ELSEWHERE; BUT NONE OF US HERE CAN SHIRK OUR DUTY TO MAKE OUR OWN CONTRIBUTION BY IMPROVING THE RELEVANT RULES OF THE LAW OF THE SEA REGARDING POLLUTION FROM SHIPS.

SEVERAL CLARIFICATIONS AND IMPROVEMENTS ARE NEEDED TO BETTER PROTECT BOTH ENVIRONMENTAL AND NAVIGATIONAL INTERESTS. UNNECESSARY AMBIGUITIES AND RESTRICTIONS HAVE BEEN INTRODUCED WITH RESPECT TO THE RIGHTS OF THE COASTAL STATE IN THE TERRITORIAL SEA. IF THESE ARE CLARIFIED, IT

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WOULD BE EASIER IN OUR VIEW TO AVOID REOPENING OLD CONTENTIOUS ISSUES.

FOR EXAMPLE, IT IS OUR UNDERSTANDING THAT THIS COMMITTEE LONG AGO DECIDED THAT THE COASTAL STATE HAS THE RIGHT TO APPLY ITS OWN DISCHARGE STANDARDS TO VESSELS IN INNOCENT PASSAGE IN THE TERRITORIAL SEA, THAT THESE STANDARDS CAN BE STRICTER THAN INTERNATIONAL STANDARDS, AND THAT THIS RIGHT IS NOT LIMITED BY ANY REQUIREMENT THAT THE DISCHARGE BE "WILFUL AND SERIOUS." THIS COMMITTEE OUGHT TO LOOK WITH SYMPATHY UPON THE REASONABLE REQUEST OF THOSE WHO HAVE NOT PARTICIPATED IN ITS WORK FOR REAFFIRMATION OF THIS CONCLUSION. IN ADDITION, IT IS POSSIBLE TO INTERPRET THE ICNT TO PERMIT NEIGHBORING COASTAL STATES TO POOL THEIR RIGHTS IN THE TERRITORIAL SEA TO ENSURE COMPLIANCE WITH ENVIRONMENTAL CONDITIONS FOR PORT ENTRY, INCLUDING CONDITIONS RELATING TO DESIGN, CONSTRUCTION, MANNING, AND EQUIPMENT. SINCE THERE IS NO DOUBT IN ANY CASE THAT A STATE HAS COMPLETE DISCRETION TO FIX PORT ENTRY REQUIREMENTS, REASONABLE CLARIFICATION OF THE RIGHT OF NEIGHBORING STATES TO TAKE JOINT PREVENTIVE MEASURES IN THE TERRITORIAL SEA MIGHT BETTER PROMOTE BOTH ENVIRONMENTAL AND NAVIGATIONAL INTERESTS THAN A SITUATION INVOLVING CONFLICTING INTERPRE-

TATIONS. AT THE SAME TIME, THE ICNT'S ELIMINATION OF COASTAL STATE RIGHTS TO IMPOSE PUNISHMENTS OTHER THAN MONETARY PENALTIES FOR POLLUTION VIOLATIONS IN THE TERRITORIAL SEA SHOULD BE REVIEWED.

WITH RESPECT TO THE ECONOMIC ZONE, THE THEORY OF THE ICNT IS THAT PROTECTION OF NAVIGATION IS BEST SERVED BY THE MAINTENANCE OF EXCLUSIVELY INTERNATIONAL AND INTERNATIONALLY APPROVED STANDARDS, WHILE THE PROTECTION OF THE ENVIRONMENT IS BEST SERVED BY RIGOROUS ENFORCEMENT OF THOSE STANDARDS. IF THIS SYSTEM IS TO BE FULLY ACCEPTED, WE MUST PROCEED NOT ONLY ON THE ASSUMPTION THAT MARITIME COUNTRIES ARE ALREADY COMMITTED TO SEEKING EVER HIGHER

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INTERNATIONAL STANDARDS IN THE COMPETENT INTERNATIONAL ORGANIZATION, AND THAT ALL STATES MUST RESPECT THOSE STANDARDS, BUT THAT THE SYSTEM ITSELF IS FAIRLY AND UNAMBIGUOUSLY SET FORTH IN THE TEXT.

THE ENFORCEMENT SYSTEM IN THE ECONOMIC ZONE SEEMS, AS PRESENTLY DRAFTED, INSUFFICIENTLY PROTECTIVE OF BOTH NAVIGATION AND ENVIRONMENTAL INTERESTS. THE PROVISIONS REGARDING ARREST IN THE ECONOMIC ZONE ELABORATE SUBJECTIVE STANDARDS THAT MAY LEND THEMSELVES TO CONFUSION AND ABUSE.

IT IS IMPORTANT THAT AN OBJECTIVE SET OF CIRCUMSTANCES BE PRESENT BEFORE AN ARREST CAN OCCUR. SUBJECTIVE CRITERIA ARE NOT LIKELY TO PROTECT SHIPPING ADEQUATELY FROM ABUSE OF DISCRETION, NOR ARE THEY LIKELY TO GIVE ANY REAL GUIDANCE TO COASTAL STATES ATTEMPTING TO CONFORM THEIR ACTIONS STRICTLY TO REQUIREMENTS OF THE TREATY. WE ALSO AGREE THAT FURTHER CLARIFICATION OF THE COASTAL STATE'S

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RIGHT TO INTERVENE IN CASES OF A MARITIME CASUALTY IS DESIRABLE.

SIMILARLY, WHILE WE RECOGNIZE THAT THE CONCEPT THAT THE FLAG STATE COULD PRE-EMPT PROCEEDINGS IN THE COURTS OF OTHER STATES IS A PART OF THE OVERALL PACKAGE PRODUCED IN THIS COMMITTEE, THE MANNER OF ITS ELABORATION HAS CAUSED CONSIDERABLE CONCERN. FOR EXAMPLE, WE HAVE BEEN ASKED WHETHER A COASTAL STATE MAY BE REQUIRED TO SUSPEND PROCEEDINGS IN ITS OWN COURTS WITH RESPECT TO DISCHARGES THAT THREATEN THE RESOURCES OF ITS OWN ECONOMIC ZONE. CLEARLY, A SENSIBLE ANSWER TO THIS QUESTION WOULD BE NO. THE POINT IS OF SUFFICIENT IMPORTANCE WITH RESPECT TO THE REACTION TO THE OVERALL CONCEPT OF FLAG STATE PRE-EMPTION THAT ANY AMBIGUITY IN THE TEXT OUGHT TO BE CLARIFIED.

SINCE THE ICNT SYSTEM RELIES HEAVILY ON THE DUTY OF ALL STATES TO RESPECT INTERNATIONAL RULES AND STANDARDS, PARTICULARLY IN THE ECONOMIC ZONE, WE BELIEVE SOME FURTHER SPECIFICITY WITH RESPECT TO THE SCOPE OF THOSE INTERNATIONAL RULES AND STANDARDS WOULD BE HELPFUL. THUS, WE MIGHT CONSIDER EXPRESS REFERENCES IN THE TEXT TO THE ADOPTION OF APPROPRIATE ROUTING SYSTEMS AND TO REQUIREMENTS TO NOTIFY THE COASTAL STATE IN THE EVENT OF DISCHARGE.

MR. CHAIRMAN, TURNING TO THE QUESTION OF SCIENTIFIC RESEARCH, MY DELEGATION HAS REPEATEDLY STRESSED THE IMPORTANCE OF FREE AND OPEN SCIENTIFIC RESEARCH TO ALL MANKIND. WE HAD HOPED THAT A REGIME CONSIDERABLY MORE FAVORABLE TO SCIENTIFIC RESEARCH COULD BE NEGOTIATED AT THIS CONFERENCE. NEVERTHELESS, OUR PROPOSALS FOR CLARIFICATION AND IMPROVEMENT AT THIS SESSION ARE QUITE CIRCUMSCRIBED AND MODEST. TAKING INTO ACCOUNT OUR OWN COMMITMENT TO THE INTEGRITY OF THE NEGOTIATING PROCESS, WE PROPOSE

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THAT THE RESULTS OF ARDUOUS PACKAGE NEGOTIATIONS PRESENTED TO THE SECOND AND THIRD COMMITTEES AT THE LAST SESSION BE

MORE PRECISELY REFLECTED IN THE PART XIII TEXTS ON SCIENTIFIC RESEARCH, AS THEY WERE IN THE PART V TEXTS ON THE ECONOMIC ZONE. ACCORDINGLY, WE TRUST THAT THIS COMMITTEE AND THE CONFERENCE WILL BE ABLE TO EFFECT THE CHANGES IN A SIMILAR SPIRIT OF ACCOMMODATION AND RESTRAINT.

MR. CHAIRMAN, THIS COMMITTEE CAN AND MUST ACT AT THIS SESSION. IT MUST ACT TO AVOID UNNECESSARY RESTRICTIONS ON OUR MEANS FOR LEARNING MORE ABOUT THE MARINE ENVIRONMENT; AND IT MUST ACT TO STRENGTHEN THE RIGHTS OF STATES TO TAKE ACTION TO PROTECT THE MARINE ENVIRONMENT. THIS IS NOT THE TIME FOR FORMAL PROPOSALS AND FORMAL MEETINGS. WE CAN JOIN OTHER DELEGATIONS IN OPPOSING ANY GENERAL REOPENING OF THE PRESENT TEXT.

WHAT IS NEEDED ARE IMPROVED TEXTS IN PARTS XII AND XIII AT THIS SESSION DEVELOPED IN ACCORDANCE WITH OUR PROCEDURAL DECISIONS. THE BEST MEANS FOR ACHIEVING THIS WOULD BE INFORMAL AND FLEXIBLE PROCEDURES UNDER YOUR GUIDANCE. TO THIS END, WE PLEDGE OUR FULLEST COOPERATION.

THANK YOU, MR. CHAIRMAN. END QUOTE. RICHARDSON

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